



**Homeland  
Security**



U.S. General Services Administration

September 1, 2015

Mr. Paul Phifer, PhD  
Assistant Regional Director - Ecological Services  
Northeast Regional Office  
U.S. Fish and Wildlife Service  
300 Westgate Center Drive  
Hadley, MA 01035-9589

Re: Endangered Species Act Consultation at Plum Island, New York

Dear Mr. Phifer:

This is a follow up to a letter sent to your attention on February 26, 2015, regarding the ongoing consultation between the General Services Administration (GSA), the Department of Homeland Security (DHS) and your office pursuant to Section 7 of the Endangered Species Act (ESA) as it relates to the sale of Plum Island, New York.

We are writing to provide you with an update on recent activities at Plum Island and request additional information from you, in furtherance of the objectives established at our meeting in your office on February 11, 2015. Specifically, DHS has implemented an Environmental Benefit Project ("EBP") with the New York State Department of Environmental Conservation (NYSDEC), effective on May 4, 2015. Through the EBP, DHS has agreed to conserve and protect the ecological character of approximately 144 acres of land along the southern shoreline and wetland areas ("Controlled Property") of Plum Island for as long as the Plum Island remains in DHS ownership. That agreement is reflected in an Environmental Notice. Copies of all documents are enclosed herewith.

Given DHS' lack of authority to encumber Plum island, the Environmental Notice specifically does not create an interest in real property nor does it run with the land; it does, however, represent the ongoing commitment of DHS to protect threatened and endangered species on Plum Island and may provide a baseline for future compliance with the ESA when Plum Island is transferred out of federal ownership. Specifically, DHS has agreed to the following terms set forth in the Environmental Notice pertaining to the Controlled Property, for as long as Plum Island remains in federal ownership:

- A. There shall be no development, clearing, construction, vehicle traffic, or human related activities allowed within the Controlled Property unless essential to the preservation of life or property or within the reservation stated in paragraph "fourth" below;

- B. Any beach area activity in the Controlled Property, including any activities to preserve beaches, will be properly planned and executed to ensure that any adverse impact to the beach area will be mitigated to insignificance;
- C. Appendix B depicts a 100-foot buffer from significant piping plover and seal habitat along the shoreline of the southern coastal portions of the island. Foot traffic in these areas shall be minimized and, during nesting season (April 1 - August 15th), prohibited; and
- D. No disposal of any solid or hazardous waste shall occur on the Controlled Property at any time.

[Paragraph Fourth reads: "FOURTH, DHS shall maintain the right to enter into the Controlled Property for the following limited purposes: (1) to carry out its security and law enforcement programs as determined necessary by DHS, including to install, maintain, repair or replace security or law enforcement infrastructure, (2) to access utilities in need of maintenance, replacement or repair and to conduct such maintenance, replacement or repair, or (3) to provide emergency medical services. Such access shall be in the least intrusive manner possible and for the shortest duration possible, consistent with the need, and shall to the extent possible respect the purposes of the restriction s herein."]

Additionally, DHS is cooperating with the NYSDEC in allowing the New York Natural Heritage Program to conduct, through a NYSDEC grant, a biodiversity inventory spanning four seasons to update the 2012 cataloging of the species (including nocturnal and diurnal animals, plants, insects, and amphibious species) of interest on Plum Island (the Four Seasons Study). A final report is expected by NYSDEC and DHS in June 2016. We are enclosing a copy of the Scope of Work for the Four Season Study; the 2012 report is available here <http://nynhp.org/PlumIsland>. Please contact Gary Mandelburg, Program Manager, Environment, Safety, and Occupational Health, PIADC, with any questions or for any further information on this activity.

We look forward to receiving information from your office on the likely location of habitat for the Piping Plover, the Red Knot, the Roseate Tern and the Northern Long Eared Bat, as well as the best management practices (BMP) for these species. We had discussed that transfer of information at our meeting in February. Once we receive this information from your office, as well as the report from the Four Seasons Study, we will work with your office to evaluate the potential effects of the conveyance of Plum Island on these species. Please forward any questions you may have, as well as information regarding species habitat and/or BMP to Project Manager John Dugan at [john.dugan@gsa.gov](mailto:john.dugan@gsa.gov) at your convenience.

Sincerely,



Dr. Teresa Pohlman, Executive Director  
Sustainability and Environmental Programs  
Department of Homeland Security



Glenn Rotondo  
Regional Commissioner  
Public Buildings Service  
General Services Administration

Enclosures: EBP, SOW

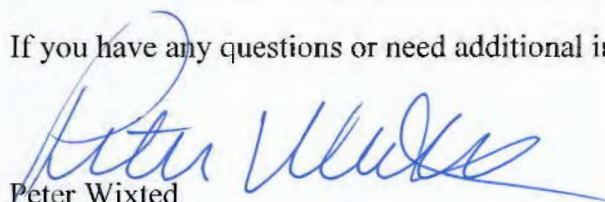
September 1, 2015

Carol Chirico  
Assistant Regional Counsel  
New England Region  
General Services Administration  
10 Causeway Street, Room 1090  
Boston, MA 02222  
Phone: (617) 565-5890  
Fax: (617) 565-7278

Carol,

Enclosed please find the Endangered Species Act letter for Plum Island signed by Dr. Teresa Pohlman. Please email me when you receive this letter.

If you have any questions or need additional information, please contact me.



Peter Wixted  
Environmental Program Manager  
Department of Homeland Security  
[Peter.wixted@hq.dhs.gov](mailto:Peter.wixted@hq.dhs.gov)  
(202) 664-6847



Scope of work  
New York Natural Heritage Program  
Inventory of Plum Island, New York  
January 1, 2015 – June 30, 2016

The New York Natural Heritage Program will perform the following tasks:

- 1) Coordinate with Department of Homeland Security and their contractors on access, on-island transportation, housing, and other logistical issues.
- 2) Conduct field surveys for the following taxa. Months given are approximate based on likely visits.
  - a. Bats: Surveys of bunkers for potential bat hibernacula in February and December; acoustic surveys monthly from April – October
  - b. Nocturnal birds: Surveys for barn owl, whip-poor-will, and other nocturnal birds on at least three separate occasions in June
  - c. Seals: counts of hauled-out seals and those visible from the water will be made once each at low tide in February, April, and December
  - d. New England cottontail: one day of searching for rabbit pellets in February and December, ideally after significant snow
  - e. Small mammals: One week of trapping for small mammals in summer in dune habitats
  - f. Sea turtles: Monthly snorkel surveys of mapped seagrass beds from June to November
  - g. Freshwater amphibians and reptiles: Coordination of a group survey with outside experts in May or June
  - h. Freshwater fish: Participation in NYS DEC surveys
  - i. Dragonflies and damselflies: Coordination of group surveys with outside experts in June, July, and/or August
  - j. Moths: biweekly light-trapping surveys for moths in habitats likely to produce the most rare species
  - k. Butterflies: Visual surveys at least monthly in spring and summer
  - l. American burying beetle: Baited pitfall trapping over at least one week in June or July
  - m. Hairy-necked tiger beetle: Count of beetles in survey of entire sandy beach in May, June, or September
  - n. Bees: Coordination of group surveys with outside experts in summer months
  - o. Rare plants: One day of surveying in June, three days of surveying in August
  - p. Invasive species: All invasive species documented will be entered into the iMapinvasives database
  - q. Significant natural communities: Two weeks of surveying maritime bluff, maritime beach, maritime dunes, and marine rocky intertidal communities in August or early September. One week documenting seagrass beds via snorkeling or diving in midsummer.
- 3) Process field data and create element occurrence records in Biotics for species and natural communities tracked by NYNHP.

- 4) Write a complete report of the results of field inventories, including narrative of finds and comparison to potential biodiversity and previous knowledge, maps, field data, and digital photos. The report will include an updated summary of bird survey work by Audubon NY, including a full species list.

Timeline:

January 1, 2015	Begin work
Winter 2015	Field work for bats, seals, and mammal sign
Spring 2015	Surveys for bats, seals, insects, freshwater reptiles and amphibians, nocturnal birds, rare plants
Summer 2015	Surveys for bats, small mammals, insects, sea turtles, eelgrass beds, terrestrial and intertidal significant natural communities
Fall 2015	Surveys for bats, sea turtles, mammal sign
March 31, 2016	Draft report to DEC & DHS
June 30, 2016	Final report to DEC



## ENVIRONMENTAL NOTICE

**THIS ENVIRONMENTAL NOTICE** is made the 04 day of May 2015, by the New York State Department of Environmental Conservation (Department), having an office for the transaction of business at 625 Broadway, Albany, New York 12233.

**WHEREAS**, Plum Island, an island of 843 acres in Long Island Sound, in the Township of Southold, Suffolk County, New York, is the subject of a Settlement Agreement and Administrative Order on Consent, entered on October 1, 2013 and effective October 21, 2013, between the Department and the United States Department of Homeland Security ("DHS").

**WHEREAS**, Plum Island is home to the Plum Island Animal Disease Center, a high security federal facility critical to the security of the United States and is thus not open to uncontrolled public access.

**WHEREAS**, the October 2013 Order on Consent requires implementation of an environmental benefit project (EBP). To conserve, preserve, and protect its environmental resources and to benefit the people of the State of New York, the Department asked that DHS consider and DHS has agreed, to have filed this Environmental Notice in order to conserve and protect the ecological character of a certain areas of Plum Island (hereinafter, the "Controlled Property"), which is described more fully in Appendix "A" and is shown on a map attached to this Notice as Appendix "B" and made a part hereof.

**NOW, THEREFORE**, the Department provides notice that:

**FIRST**, unless prior written approval by the Department or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State, hereinafter referred to as "the Relevant Agency," is first obtained:

- A. There shall be no development, clearing, construction, vehicle traffic, or human related activities allowed within the Controlled Property unless essential to the preservation of life or property or within the reservation stated in paragraph FOURTH, below.
- B. Any beach area activity in the Controlled Property, including any activities to preserve beaches, will be properly planned and executed to ensure that any adverse impacts to the beach area will be mitigated to insignificance.
- C. Appendix B depicts a 100-foot buffer from significant piping plover and seal habitat along the shoreline on the southern coastal portions of the island. Foot traffic in these areas shall be minimized and, during nesting season (April 1 – August 15<sup>th</sup>), prohibited, except for conduct of the piping plover monitoring program conducted on behalf of the Department and other biodiversity studies.
- D. No disposal of any solid or hazardous waste shall occur on the Controlled Property at any time.

**SECOND**, the Department, its agents, employees or other representatives, may enter upon and inspect the Property in a reasonable manner, at reasonable times, and in compliance with the DHS access control protocols in place with the Department, to ensure compliance with this Notice.

**THIRD**, the boundaries of the Controlled Property will be marked by signs visible at reasonable distances and spaced so as to reasonably ensure that any individual unaware of the existence of the

restricted use of the Property will see the signs and make appropriate inquiries. Signs will be posted at beach access points to prohibit driving onto the Controlled Property.

**FOURTH**, DHS shall maintain the right to enter into the Controlled Property for the following limited purposes: (1) to carry out its security and law enforcement programs as determined necessary by DHS, including to install, maintain, repair or replace security or law enforcement infrastructure, (2) to access utilities in need of maintenance, replacement or repair and to conduct such maintenance, replacement or repair, or (3) to provide emergency medical services. Such access shall be in the least intrusive manner possible and for the shortest duration possible, consistent with the need, and shall to the extent possible respect the purposes of the restrictions herein.

**FIFTH**, this Notice does not constitute creation or conveyance of an interest in real property.

**SIXTH**, this Notice does not constrain the operations of DHS, including specifically, the Plum Island Animal Disease Center, except as specifically stated in section FIRST above.

**SEVENTH**, this Notice does not prevent the Department or the State of New York from engaging in additional efforts to protect Plum Island or portions thereof within and outside the Controlled Property, this Notice does not constitute a waiver of any claims for the protection of Plum Island by the State and the State reserves all such rights, and this Notice may be amended or modified in the future through an agreement of the parties.

**IN WITNESS WHEREOF**, the undersigned, acting by and through the Department of Environmental Conservation as Designee of the Commissioner, has executed this instrument the day written below.

By: 

Kathleen Moser

New York State Department of Environmental Conservation  
Assistant Commissioner of Natural Resources

STATE OF NEW YORK       )  
  ) ss:  
COUNTY OF                       )

On the 4th day of May, in the year 2015, before me, the undersigned, personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the individual, or the person upon behalf of which individual acted, executed the instrument.

  
Notary Public – State of New York

ANDREW O. GUGLIELMI  
Notary Public, State of New York  
No. 02GU8177583  
Qualified in Albany County  
Commission Expires November 13, 2015



**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

-----X  
In the Matter of Alleged Violations of Articles 27 and 71  
of the New York State Environmental Conservation Law ("ECL")  
and Part 360 of Title 6 of the Official Compilation  
of Codes, Rules and Regulations of the State of New  
York ("NYCRR")

-by-

**United States Department of Homeland Security  
Plum Island Animal Disease Center**

**ADMINISTRATIVE  
ORDER ON CONSENT**

DEC Case No. CO 1-20120216-25

(Suffolk County)

Respondent.

-----X  
**WHEREAS:**

1. The New York State Department of Environmental Conservation (hereinafter referred to as the "DEC" or "the Department") is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, *inter alia*, the Environmental Conservation Law (hereinafter referred to as the "ECL") §3-0301. In particular, ~~DEC has jurisdiction over the storage, treatment, disposal and transportation of regulated~~ medical waste ("RMW") pursuant to the powers conferred upon it in Article 3 and Article 27, Title 15 of the ECL.
2. Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") sets forth requirements for entities that are responsible for storing, treating, disposing and transporting RMW. The Department issues permits, pursuant to 6 NYCRR 360-17, for regulating facilities that treat and destroy RMW.
3. The United States Department of Homeland Security (hereinafter referred to as the "Respondent" or "DHS") is a federal agency of the government of the United States, which owns, operates, and maintains a bio-safety level 3 (BSL-3) research facility known as the Plum Island Animal Disease Center ("PIADC") in the County of Suffolk, State of New York (mailing address of P.O. Box 848, Greenport, NY 11944).
4. PIADC is subject to Department regulation pursuant to a permit, issued to DHS on October 1, 2008, under 6 NYCRR Part 360, #1-4738-00028/00014 ("the Part 360 permit"), which pertains to the ongoing treatment, storage and disposal of RMW under Article 27, Title 15 of the ECL and 6 NYCRR Part 360.
5. The Department alleges that the Part 360 permit allows the operation of two Building 101 exit vacuum autoclaves for the treatment of RMW generated at BSL-3 in Buildings 101 and 102



of the PIADC; that Special Condition #5 of the Part 360 permit states that only Building 101 lab generated RMW and RMW sharps, and Building 102 RMW, are authorized for treatment in the exit autoclaves; and that no high density wastes may be treated in bulk.

6. Special Conditions #2 and #7 of the Part 360 permit require that operational changes, including changes in the duration of treatment and challenge testing, be submitted to the Department for their approval prior to implementation by PIADC.

7. During inspections on August 2, 3, and 10, 2011, Department staff was notified that in addition to loads of laboratory waste PIADC is permitted to treat in its exit autoclaves, loads of other waste from Building 101 were being treated in the autoclaves, including cafeteria waste, construction and demolition debris (including concrete and sheetrock), metal fixtures, cardboard, and papers. This non-laboratory waste was being shipped for disposal and/or recycling without certificates noting that it had been treated, as the Department alleges and Respondent denies is required by 6 NYCRR 360-17.4(g) and Special Condition #12 of the Part 360 permit.

8. The Department alleges that it was not provided with a validation testing program for its approval prior to any validation of the autoclaves for these non-laboratory waste streams; that it was also not provided with validation testing procedures for the non-laboratory waste prior to its treatment in the autoclaves, and that it was not provided any results of challenge testing (showing that biological indicators were inactivated) for the non-laboratory waste, as the Department alleges and Respondent denies is required by 6 NYCRR 360-17.5(b).

9. During inspections on August 2, 3, and 10, 2011, Department staff observed that PIADC had altered its challenge testing procedures for laboratory waste treated in the autoclaves, by changing biological indicators, in the form of spore strips, used in challenge testing of sharps from 7-day to 2-day indicators. Department staff also observed that Respondent failed to place biological indicators, in the form of spore strips, inside individual sharps containers as required pursuant to the validation program conducted on these containers, as required by 6 NYCRR 360-17.4(d) and Special Conditions #2 and #7 of the Part 360 permit.

10. During inspections on August 2, 3, and 10, 2011, Department staff observed that PIADC was not using a Part 364 transporter for the non-laboratory treated waste when shipping this waste off-site as the Department alleges and Respondent denies is required by 360-17.4(b)(5).

11. Based on the foregoing, the Department alleges that Respondent committed the following violations:

A. Respondent has been treating non-laboratory wastes, including high density wastes such as construction and demolition debris (including concrete and sheetrock), metal fixtures, and cardboard, without first proposing and receiving Department approval of a validation testing

procedure that was performed under Department oversight, in violation of 6 NYCRR 360-17.5(b).

B. Respondent failed to notify and receive Department approval for process changes from 7 to 2-day indicators in challenge testing for laboratory wastes treated in the exit autoclaves, in violation of 6 NYCRR 360-17.4(d) and Special Conditions #2 and #7 of the Part 360 permit. Respondent additionally violated these same provisions by failing to place biological indicators within individual sharps containers, which is inconsistent with Department-approved validation and challenge testing protocols.

C. Respondent failed to include RMW Treatment Certification Forms with each load of waste treated and sent-off site, for the wastes it treats in its exit autoclaves, in violation of 6 NYCRR 360-17.4(g) and Special Condition #12 of the Part 360 permit.

D. Respondent failed to use a Part 364 transporter permitted to transport treated RMW for all of the non-laboratory waste not validated for treatment in the exit autoclaves which was removed from Building 101 in violation of 6 NYCRR 360-17.4(h).

12. Respondent admits that it failed to notify and receive Department approval for process changes from 7 to 2-day indicators in challenge testing for laboratory wastes treated in the exit autoclaves and failed to place biological indicators within individual sharps containers in violation of 6 NYCRR 360-17.4(d) and Special Conditions #2 and #7 of the Part 360 permit. However, Respondent denies that the process changes in any way compromised the safety or efficacy of the decontamination process and further denies that a permit change would have been required.

13. ECL § 71-4402 provides that any person who violates any of the provisions of Title 15 of article 27 of the ECL, or any of its implementing regulations, or any term or condition of any certificate, permit, or order issued pursuant thereto, shall be liable in the case of a first violation, for a civil penalty up to and not to exceed twenty-five thousand dollars and an additional penalty of not more than twenty-five thousand dollars for each day during which such violation continues... and, in addition thereto, such persons may by similar process be enjoined from continuing such violation and subject to revocation of Department-issued permits.

14. The Department and the Respondent have engaged in negotiations regarding management of all wastes being removed from within the bio-containment area of the PIADC and now wish to resolve this matter without further litigation and without a litigated resolution as to any remaining issues of fact or law; Respondent waives its right to a hearing in this matter and judicial review as provided by law; and consents to the issuance of this Order and agrees to be bound by its terms.

15. The parties agree that Respondent, in conducting its operations as a BSL-3 bio-containment facility, shall be subject to the parameters of the Part 360 permit, the laws, rules and regulations of the State of New York, and shall comply with the requirements thereof as



understood with the terms of this Order. The parties further agree that the application for renewal of the Part 360 permit having been timely submitted for renewal will be held in abeyance until terms consistent with the agreements and results of processes in this Order can be incorporated.

16. The Department intends and the Respondent recognizes the goal of the Department to over time modify the Part 360 permit to cover all waste treatment methods used to ~~decontaminate waste leaving bio-containment in building 101, including treatment in the exit autoclaves, airlocks, and pass-through box.~~ The parties agree to bring their respective technical expertise together to develop scientifically sound and workable validation testing methodologies for these other technologies. The parties also agree to modify, once the aforementioned methodologies are agreed, the Part 360 permit to additionally cover the waste treatment processes for other waste leaving bio-containment, including the incinerators and the liquid and sludge waste currently treated in Building 102 of PIADC. Pending modification of the Part 360 permit, Respondent will continue to use these waste treatment technologies for decontaminating material leaving bio-containment. Until the permit is renewed and modifications are finalized, the provisions of the existing Part 360 permit, along with the provisions of this Order, shall govern Respondent's conduct at PIADC. In the event this Order and the existing Part 360 permit may conflict, the provisions of this Order shall control.

17. The Department and the Respondent recognize that certain decontaminated materials that leave bio-containment, such as industrial gas tanks or equipment in need of repair, do not constitute waste or RMW because they are not destined for disposal. Respondent will make its best efforts to have repairs performed on the island, if possible. When materials have to be returned to the original owner (i.e. industrial gas tanks), manufacturer or supplier, or sent to independent repair facilities, Respondent will make reasonable efforts to ensure that those materials are returned to the island for reuse.

18. Respondent desires to enter into this Order to settle the above violations with the Department and for the purpose of temporary authority to treat both laboratory and non-laboratory wastes in its exit autoclaves, subject to the Schedule of Compliance in Appendix A discussed below.

**WHEREAS**, the Department has determined that it is in the public interest to enter into this Order and implement the established compliance plan as set forth in Appendix A:

**NOW**, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

**I. Schedule of Compliance**

Respondent agrees to timely take all corrective actions described in Appendix A of this Consent Order, which is incorporated into, and made an enforceable part of, this Order.

## **II. Civil Penalty & Environmental Benefit Project**

With respect to the violations described in paragraph 11 above, the Department, in settlement of such violations, hereby assesses against Respondent:

A. A payable penalty in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) will be suspended until completion of an Environmental Benefit Project (EBP) with a minimum approximate value of \$25,000. Upon satisfactory completion of the obligations relating to the EBP, the payable penalty will be waived. However, upon any failure of the EBP, Respondent will pay this amount within thirty (30) calendar days of the effective date of this Order, ~~by check made payable to the order of the New York State Department of Environmental Conservation.~~ Respondent will submit such settlement payments as required by this Order to:

Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1500  
Attn: Andrew Guglielmi, Esq.

### **B. An Environmental Benefit Project (EBP)**

1. Respondent and the Department have discussed the Department's interest in having Respondent implement a conservation easement over portions of Plum Island. Respondent agrees in principle to accomplish this purpose as an EBP.

2. Within 60 calendar days of the effective date of this Order, unless the Department determines that additional time is warranted and grants an extension in writing, Respondent shall submit a description of an area to be set aside as a conservation easement to the Department for its review and approval. If the Department and Respondent agree to an alternative EBP to the conservation easement during the single year after the effective date of this Order, Respondent shall submit an alternate proposal for the Department's review and approval. If the conservation easement has not been put into place within one year of the effective date of this Order or an approved alternative has not been put into place by any alternative agreed date, then the amount set forth in subparagraph II.A shall be paid as a penalty.

## **III. Failure to Comply & Stipulated Penalties**

A. Respondent's failure to comply with any provision of this Order, Appendix A, and all the conditions contained herein, unless by reason of an event or circumstance which qualifies under the terms of paragraph XII below, shall constitute a violation of this Order and the ECL, and may subject Respondent to revocation of the Part 360 Permit and termination of this Order.

B. If Respondent fails to comply with any term or condition set forth in this Order in



the time or manner specified herein, then Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of any term or condition of this Order. Stipulated penalties shall be due and payable pursuant to the following schedule:

<u>PERIOD OF NONCOMPLIANCE</u>	<u>PENALTY PER DAY</u>
1st day through 15th day	\$1000.00
16th day through 30th day	\$2500.00
31st day and each day thereafter	\$7500.00

Stipulated penalties shall begin to accrue on the first day Respondent is in violation of a term or condition of this Order and shall continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within sixty (60) calendar days after receipt of notification from the Department assessing the stipulated penalties. If such payment is not received within sixty (60) calendar days after Respondent receives such notification from the Department, interest shall be payable at the rate specified by the New York Civil Practice Law and Rules for interest on a judgment on the overdue amount from the day on which it was due through, and including, the date of payment. Stipulated penalties shall be paid by certified check or money order, made payable to New York State Department of Environmental Conservation, and shall be delivered personally or by certified mail, return receipt requested, to Office of General Counsel, N.Y.S.D.E.C., 625 Broadway, 14<sup>th</sup> Floor, Albany, N.Y. 12233-1500, Attn: ~~Andrew Guglielmi, Esq.~~ Payment of the stipulated penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. The payment of stipulated penalties as set forth above shall not limit the Department's right to seek such other relief as may be authorized by law.

#### **IV. Jurisdiction**

The parties agree to be subject to and bound by the laws of the State of New York.

#### **V. Termination and Reservation of Rights**

A. This Consent Order shall be deemed completely satisfied and shall terminate upon payment of penalties, implementation of EBPs, renewal of the Part 360 permit, and DEC's written approval of Respondent's full compliance with the actions set forth in Appendix A.

B. The Department hereby reserves all its legal, administrative and equitable rights arising at common law or as granted to it pursuant to statute or regulation, including, but not limited to, any criminal causes of action, any rights to recover natural resource damages, and any summary abatement powers the Commissioner may have pursuant to ECL 71-0303.

#### **VII. Binding Effect**

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and their successors and assigns. Nothing in this Order is intended

to require or suggest that upon the decommissioning of PIADC, DHS will be restricted from decontaminating the facilities with currently known and accepted technologies and after such decontamination, either leaving the buildings in place for use by a subsequent owner or demolishing such buildings and disposing of such demolition debris (which is not presently deemed to be RMW or TRMW) in compliance with all applicable laws and regulations (e.g., asbestos regulations if there is asbestos present) in place at the time of disposal.

**VIII. Communications**

Copies of all correspondence/reports to the Department required under this Order on Consent shall be provided to:

New York State Department of Environmental Conservation  
Region 1  
SUNY at Stony Brook  
50 Circle Road  
Stony Brook, New York 11790-3409  
ATTN: Katy Murphy

and

New York State Department of Environmental Conservation  
Division of Materials Management  
625 Broadway, 9<sup>th</sup> Floor  
Albany, New York 12233-1500  
ATTN: Alan Woodard, PhD

with an electronic copy of correspondence only to

New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1500  
ATTN: Andrew Guglielmi, Esq.

Copies of all correspondence to Respondent required under this Order on Consent shall be provided to:

United States Department of Homeland Security  
Office of the General Counsel  
Washington, DC 20528  
ATTN: William O. Bresnick, Esq.

and

United States Department of Homeland Security  
Plum Island Animal Disease Center



P.O. Box 848  
Greenport, N.Y. 11944  
ATTN: Douglas Ports

Any party may change its designee(s) under this paragraph upon written notice to the other party.

**IX. Dispute Resolution**

Respondent may submit a dispute related to the Department's determination disapproving a request or submission required or allowed in Appendix A within 15 days of receipt of the Department's determination. Such dispute will be heard by the Assistant Division Director of the Division of Materials Management. The Assistant Division Director will issue a written decision on the dispute and send a copy to Respondent. Respondent will then have 20 days from receipt of the decision to appeal the decision to the Director of the Division of Materials Management. In reviewing an appeal, the Director may: remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; determine that there is no need for further action, and that the determination of the Assistant Division Director is confirmed; or make a determination on the record as it exists. The Department will maintain an administrative record of all such disputes, and the determination of the Director of the Division of Materials Management will constitute final agency action that can be subject to review by a court of competent jurisdiction.

**X. Modification**

In those instances in which Respondent desires that any of the provisions, terms or conditions of this Order be changed, Respondent shall make written application, setting forth the ~~grounds for the relief sought~~, to the Office of General Counsel, 625 Broadway, 14<sup>th</sup> Floor, Albany, New York 12233-1500, Attention: Andrew Guglielmi. Any modifications to this Order approved by the Department shall be made in writing.

**XI. Future Compliance**

Respondent shall conduct all activities and operations at Plum Island Animal Disease Center in strict conformance with federal and New York State regulations, and any permits issued by the Department. For the purpose of ensuring compliance with this Order, duly authorized representatives of this Department shall continue to be permitted access to the subject site during reasonable hours, in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

**XII. Force Majeure**

A. Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or other relief, if Respondent cannot comply with any requirements of the provisions hereof because of an Act of God, war, riot, or other catastrophe, including natural disaster, that was not foreseen and as to which negligence or willful misconduct on the part of Respondent was not a proximate cause.

B. Respondent shall immediately notify the Department in writing, when it obtains knowledge of any such condition and shall request an appropriate extension or modification of the provisions hereof. Respondent will adopt all reasonable measures to prevent or minimize any delay.

### **XIII. Entire Agreement**

The provisions of this Order constitute the complete and entire Order issued to Respondent. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of their respective obligations to obtain such formal approvals as may be required by this Order.

### **XIV. Compliance with the Anti-Deficiency Act**

All payment obligations by the United States under this Order on Consent are subject to the availability of appropriated funds applicable for that purpose. No provision of this Order on Consent shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. secs. 1341-44 and 1511-19, the provisions of 10 U.S.C. sec. 2703, or any other applicable provision of law.

### **XV. Hold Harmless**

Respondent shall hold the Department, the State of New York, and their officers, agents and employees harmless from claims, actions, suits, judgments, liabilities, losses, costs and expenses, including attorneys' fees, arising directly and solely from the acts and/or omissions of Respondent taken to comply or attempt to comply with the provisions of this Order.

Respondent will not hold the Department, the State of New York, or their officers, agents or employees harmless from claims, actions, suits, judgments, liabilities, losses, costs and expenses, including attorneys' fees, arising from failure or inability of third parties to comply with regulatory requirements identified in this Order and the appendices hereto, including, without limitation, for failure of haulers to apply for, possess, or acquire permits pursuant to 6 NYCRR 364 or their determination(s) to deny issuance of any such permits to any such hauler or disposal site operator.

### **XVI. Effective Date**

The effective date of this Order shall be the date upon which it is signed by the Commissioner or the Commissioner's designee on behalf of the Department.



Albany, New York

Dated: 10/1, 2013

By:

A handwritten signature in dark ink, appearing to read "Joseph Martens", written over a horizontal line.

Joseph Martens


COMMISSIONER

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

**CONSENT BY RESPONDENT**

Respondent **UNITED STATES DEPARTMENT OF HOMELAND SECURITY**, acknowledges the authority and jurisdiction of the Commissioner of Environmental Conservation of the State of New York to issue the foregoing Order, waives public hearing or other proceeding in this matter, accepts the terms and conditions set forth in the Order, and consents to the issuance thereof.

Respondent: **UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY**

By (signature): 

Name (print): Dr. Teresa R. Pohlman

Title: Director, Sustainability and Environmental Programs  
an individual duly authorized by respondent to sign on behalf of the  
department named herein and who may bind respondent to the terms and  
conditions contained herein.

Date: September 20, 2013



## **APPENDIX A SCHEDULE OF COMPLIANCE**

All dates in this schedule are subject to change only in accordance with paragraph X of the Order (Modification).

### **Establishment of Waste Minimization Program**

Within 60 days of the effective date of the Order Respondent will provide a plan to reduce the amount of waste generated inside bio-containment to the Department for its review and approval. The Plan will expand on the waste characterization presented to date and will summarize and itemize (within practical limits and as defined in the plan) each waste stream leaving bio-containment at the facility, identify the method of decontamination (autoclave, fumigation, liquid chemical) used for each such stream, identify minimization and diversion strategies to reduce the types of waste and amount of waste generated inside bio-containment and prioritize, based on risk and the associated complexity and cost, the implementation of said strategies.

Development of the waste minimization program must endeavor to reduce, to the maximum extent practicable, the amount of waste material required to be disposed. Waste generated inside bio-containment generally must be disposed in an authorized solid waste landfill or incinerator and not be recycled. Certain materials currently separated and recycled and expected by Executive Order to be recycled by federal facilities, or that are not able to or are infeasible to dispose in a solid waste landfill or incinerator (e.g., fluorescent bulbs, other universal waste, etc.) or that the Department prefers not be recycled, will be evaluated by the Department on a case-by-case basis.

Once approved, Respondent will implement the waste minimization plan and provide a report to the Department 6 months after commencement of implementation as to the results achieved.

### **Validation Testing Program**

Within 60 days of the effective date of the Order Respondent will provide a validation testing program plan to the Department for all technologies used for the treatment of waste at PIADC. The steps in the validation testing program implementation are as follows:

- ~~Develop and provide to the Department a decontamination validation plan~~ for all characterized waste streams to be decontaminated in the autoclaves.
- The Department will review the proposed Plan and will comment and/or provide its approval within 30 days of the receipt of the proposed Plan.
- Once approved, Respondent and the Department shall meet to discuss and agree upon a validation testing schedule so that the Department may observe validation testing studies.
- Respondent will complete all required validation studies as defined by the plan on the agreed schedule.

- Upon approval of the autoclave validation testing plan, Respondent and the Department will begin work to develop mutually agreeable scientifically sound and workable validation methodologies for the other decontamination technologies in use for materials exiting bio-containment at PIADC but for which the parties cannot now identify a validation methodology.
- Upon determination of other validation methodologies and validation testing schedules therefore, Respondent will complete all required validation studies as defined by the plan on the agreed schedule.
- Commensurate with performance of validation studies, Respondent shall apply to modify the Part 360 permit so that the permit will cover all treatment technologies used on wastes exiting bio-containment at PIADC.
- Respondent will provide testing results to the Department upon each validation study performed.
- Respondent will provide completion report to the Department within 30 days of completion of all required validation studies.

Upon the Department's approval of the completed validation test report, and until a renewal and/or modified permit is issued by the Department for the autoclaves and other treatment technologies at PIADC, Respondent will conform all standard operating procedures contained in the approved plan and conduct training of its staff to ensure that all waste leaving the bio-containment zones will be treated in accordance with the program prior to exiting the building(s) whether destined for recycling as approved by the Department or landfill or combustor disposal at a facility approved by the Department to accept the waste.

#### **Transparency mechanism for materials disposal**

Within 5 days of the effective date of the Order, Respondent will send the notice below, by certified mail, return receipt requested, with copies to the Department, to the following entities:

- Clean Harbors
- North Fork Sanitation
- e-Green Recycling Management

Notice to Haulers:

Dear \_\_\_\_\_:

You currently have a contract to pick up materials from the Plum Island Animal Disease Center (PIADC) for transport to a destination off Plum Island for [treatment or disposal]. The materials you are transporting have come out of the bio-containment area of a U.S. Government Level 3 Bio-safety Laboratory. At the request of the NYS Department of Environmental Conservation,



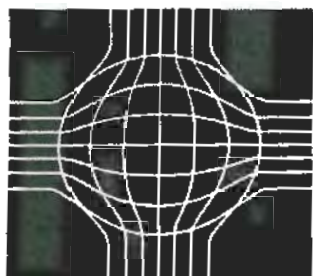
we are providing this notice so that you understand that this material required decontamination prior to its safe transport and disposal. All materials coming out of the bio-containment area of PIADC have been subjected to high temperature, liquid chemical, or gaseous decontamination processes prior to release from the facility into your possession. Consequently, you are required to comply with all state and federal requirements for transport of this material, including obtaining necessary permits under 6 NYCRR Part 364.

As a matter of transparency of operations, we have provided this letter to you. To further that transparency, we ask that you provide us the name and address of any facility to which you have delivered this material in the past so that we may send them a similar letter prior to your next shipment. The Department of Environmental Conservation (DEC) advises that all facilities to which you transport this material must be authorized by the DEC to accept the material.

As stated in the above notice, all haulers that transport this material from PIADC must be, or must apply to be, 6 NYCRR 364 permitted haulers. Current haulers who do not possess a part 364 permit will be given 30 days from the receipt of the above notice within which to seek to obtain such permit.

Within 45 days of the effective date of this Order, Respondent shall submit a plan to give additional notice to other entities that may receive waste treated at PIADC. The Plan will include:

- Any other transparency actions to provide to persons other than haulers who will be known to come into possession of materials the information from PIADC to make them aware that the source of the material is a biosafety level 3 facility and the steps that have been taken to ensure that the materials have been decontaminated in accordance with state and federal requirements.
- An implementation schedule



**MERCATOR**

Mercator#14J154  
PIADC - Area A

## **Metes & Bounds Description - Area A**

January 29, 2015

Being a part of Section 132 Block 1 Lot 30 (also known as Plum Island) situate, lying, and being in the Town of Southhold, Suffolk County and State of New York, bounded and more particularly described as:

COMMENCING at disk in a concrete structure having the coordinates of N: 372,892.99' & E: 1,481,597.62' and running thence:

A. Along a tie line S 72°26'50"W, 185.56' to the point of true BEGINNING having the coordinates of N: 372,537.03' & E: 1,481,420.70'; thence,

1. Along a line, S 10°35'31" E, 87' to a point; thence,
2. Along a line, S 16°51'48" W, 354' to a point; thence,
3. Along a line, S 18°45'16" W, 167' to a point; thence,
4. Along a line, S 25°59'16" W, 221' to a point; thence,
5. Along a line, S 15°13'33" W, 92' to a point, being on a course N 62°35'58" W, 59.01' from a disk set in the concrete apron of manhole; thence,
6. Along a line, N 89°52'35" W, 113' to a point; thence,
7. Along a line, S 65°11'17" W, 104' to a point; thence,
8. Along a line, S 52°42'34" W, 186' to a point; thence,
9. Along a line, S 2°23'15" E, 188' to a point; thence,
10. Along a line, S 20°03'56" W, 162' to a point; thence,
11. Along a line, S 81°20'24" W, 220' to a point; thence,
12. Along a line, S 76°41'01" W, 227' to a point; thence,
13. Along a line, S 84°17'00" W, 313' to a point; thence,
14. Along a line, N 88°41'04" W, 266' to a point; thence,
15. Along a line, N 73°25'08" W, 130' to a point; thence,
16. Along a line, N 62°41'27" W, 83' to a point; thence,
17. Along a line, N 59°25'42" W, 240.50' to a point; thence,
18. Along a line, N 56°15'44" W, 212' to a point; thence,
19. Along a line, N 59°33'29" W, 214' to a point; thence,
20. Along a line, N 61°15'12" W, 206' to a point; thence,
21. Along a line, N 8°10'55" W, 125' to a point; thence,
22. Along a line, N 5°57'25" W, 114' to a point; thence,
23. Along a line, N 9°31'56" E, 55' to a point; thence,
24. Along a line, N 37°44'57" E, 22' to a point; thence,
25. Along a line, N 33°12'49" W, 23' to a point; thence,



26. Along a line, N 36°24'30" W, 41' to a point; thence,  
27. Along a line, N 24°08'02" E, 47' to a point; thence,  
28. Along a line, N 44°12'45" E, 49' to a point; thence,  
29. Along a line, N 12°26'31" E, 54' to a point, being on a course S 42°26'57"E,  
67.73' from a disk in a concrete structure; thence,  
30. Along a line, N 53°44'26" E, 234' to a point; thence,  
31. Along a line, N 13°34'48" E, 448' to a point; thence,  
32. Along a line, N 31°06'11" E, 420' to a point; thence,  
33. Along a line, N 40°29'39" E, 382' to a point; thence,  
34. Along a line, N 56°37'05" E, 60' to a point; thence,  
35. Along a line, N 76°07'15" E, 63' to a point; thence,  
36. Along a line, N 79°44'39" E, 379.50' to a point; thence,  
37. Along a line, N 74°29'13" E, 333.50' to a point; thence,  
38. Along a line, S 42°52'21" E, 18' to a point; thence,  
39. Along a line, S 27°49'24" E, 189' to a point; thence,  
40. Along a line, S 47°39'30" E, 160' to a point; thence,  
41. Along a line, S 73°54'17" E, 195' to a point; thence,  
42. Along a line, S 41°45'44" E, 294' to a point; thence,  
43. Along a line, S 46°09'56" E, 410' to a point; thence,  
44. Along a line, S 49°44'08" E, 188' to the point of true BEGINNING

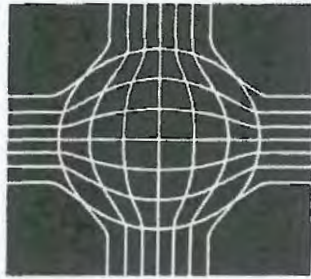
Containing 4,470,953 Sq. Feet or 102.6390 Acres more or less.

The premises being shown as Conservation Area A on a survey by Mercator Land Surveying, dated January 29<sup>th</sup>, 2015.

Mercator Land Surveying, LLC



Leonie Morrison, LS  
Surveyor #50404



**MERCATOR**

Mercator#14J154  
PIADC - Area B

**Metes & Bounds  
Description - Area B**

January 29, 2015

Being a part of Section 132 Block 1 Lot 30 (also known as Plum Island) situate, lying, and being in the Town of Southold, Suffolk County and State of New York, bounded and more particularly described as:

COMMENCING at disk in a concrete structure having the coordinates of N: 372,892.99' & E: 1,481,597.62' and running thence:

- A. Along a tie line S 37°40'38"W, 328.95' to the point of true BEGINNING having the coordinates of N: 372,332.64' & E: 1,481,798.68'; thence,
1. Along a line, S 62°43'28" E, 160.50' more or less to a point on the shoreline and being the northeasterly extent of the parcel; thence,
  2. Along the shoreline 4,294' more or less to a point being the southerly extent of the parcel and being on a course S 29°41'40" W, 4007.46' from the previous point; thence,
  3. Along a line, N 35°33'15" E, 100' to a rebar with cap; thence,
  4. Along the landward line of the parcel, S 69°32'52" E, 52' to a point; thence,
  5. Continuing along the same, S 84°17'16" E, 84' to a point; thence,
  6. Continuing along the same, N 66°20'01" E, 141' to a point; thence,
  7. Continuing along the same, N 56°50'43" E, 81' to a point; thence,
  8. Continuing along the same, N 35°29'31" E, 114' to a point being on a course S 87°04'22"W 126.30' from a Coast and Geodetic Survey disk set in concrete and stamped as "Pine Point" (LX5637); thence,
  9. Continuing along the same, N 24°26'01" E, 212.50' to a point; thence,
  10. Continuing along the same, N 19°49'29" E, 218' to a point; thence,
  11. Continuing along the same, N 19°10'44" E, 514' to a point; thence,
  12. Continuing along the same, N 27°25'26" E, 287' to a point; thence,
  13. Continuing along the same, N 23°53'28" E, 294' to a point on the outside wall of Battery Eldridge; thence,
  14. Along the exterior of Battery Eldridge, N 82°21'20" E, 27.39' to a point; thence,
  15. Continuing along the same, N 8°15'32" E, 78.86' to a point; thence,
  16. Continuing along the same, N 65°42'12" W, 10' to a point on the landward line of the parcel; thence,
  17. Along the landward line, N 17°57'37" E, 108' to a point; thence,
  18. Continuing along the same, N 18°13'04" E, 396' to a point; thence,
  19. Continuing along the same, N 20°59'31" E, 355' to a point; thence,




20. Continuing along the same, N 26°38'11" E, 228.50' to a point being on a course  
S 61°41'00" E 222.70' from a disk set in the concrete apron of a manhole; thence,  
21. Continuing along the same, N 25°06'38" E, 486' to a point; thence,  
22. Continuing along the same, N 27°16'32" E, 403' to the point of true BEGINNING.

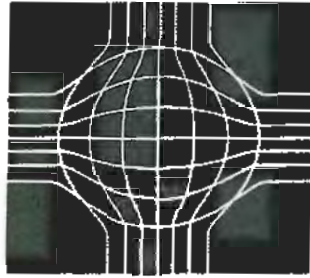
Containing 654,802 Sq. Feet or 15.0322 Acres more or less.

The premises being shown as Conservation Area B on a survey by Mercator Land  
Surveying, dated January 29, 2015.

Mercator Land Surveying, LLC



J. R. Lemuel Morrison, LS  
NY Lic Surveyor #50404



**MERCATOR**

Mercator#14J154  
PIADC – Area C

## **Metes & Bounds Description – Area C**

January 29, 2015

Being a part of Section 132 Block 1 Lot 30 (also known as Plum Island) situate, lying, and being in the Town of Southhold, Suffolk County and State of New York, bounded and more particularly described as:

BEGINNING at an iron rebar with cap having the coordinates of N: 377,532.62' & E: 1,489,791.64' and running thence:

1. Along a line, S 29°32'07" E, 150' to a point on the shoreline being the northeasterly extent of the parcel; thence
2. Along the shoreline a distance of 6,412' more or less to a point being the southwesterly extent of the parcel. Said point being on a course of S 77°29'54" W, 5924.67' from the previous point; thence,
3. Along a line N 32°08'17" W, 87.25' to a disk in a boulder; thence,
4. Along the landward line of the parcel N 9°43'32" E, 325' to a point; thence,
5. Continuing along the same, S 83°17'44" E, 325' to a disk in a boulder; thence,
6. Continuing along the same, S 74°59'53" E, 164' to a point; thence,
7. Continuing along the same, S 60°51'05" E, 248' to a point; thence,
8. Continuing along the same, S 75°20'38" E, 337' to a point; thence,
9. Continuing along the same, N 89°31'17" E, 166' to a point; thence,
10. Continuing along the same, N 82°59'16" E, 163' to a point; thence,
11. Continuing along the same, N 81°23'12" E, 84' to a point; thence,
12. Continuing along the same, N 67°36'00" E, 70' to a point; thence,
13. Continuing along the same, N 64°17'28" E, 120' to a point; thence,
14. Continuing along the same, S 79°38'27" E, 75' to a point; thence,
15. Continuing along the same, N 78°00'52" E, 93' to a point; thence,
16. Continuing along the same, N 70°27'02" E, 950' to a point; thence,
17. Continuing along the same, N 85°55'50" E, 650' to a point; thence,
18. Continuing along the same, S 87°43'28" E, 205' to a point; thence,
19. Continuing along the same, N 83°46'22" E, 183' to a point; thence,
20. Continuing along the same, N 70°18'45" E, 223' to a point; thence,
21. Continuing along the same, N 66°06'30" E, 485' to a point; thence,
22. Continuing along the same, N 59°29'39" E, 322' to a point; thence,
23. Continuing along the same, N 62°18'14" E, 252' to a point; thence,
24. Continuing along the same, N 82°28'01" E, 185' to a point; thence,
25. Continuing along the same, N 75°22'30" E, 110' to a point; thence,
26. Continuing along the same, N 71°43'45" E, 100' to a point; thence,




27. Continuing along the same, N 82°35'47" E, 148' to a point; thence,
28. Continuing along the same, N 77°09'04" E, 63' to a point; thence,
29. Continuing along the same, N 60°48'40" E, 55' to a point; thence,
30. Continuing along the same, N 62°09'58" E, 175' to a point; thence,
31. Continuing along the same, N 55°31'06" E, 60' to the rebar and cap at the point of BEGINNING.

Containing 1,259,820 Sq. Feet or 28.9215 Acres more or less.

The premises being shown as Conservation Area C on a survey by Mercator Land Surveying, dated January 29<sup>th</sup>, 2015.

Mercator Land Surveying, LLC

The seal is circular with "STATE OF NEW YORK" at the top and "JAMES MORRISON, LS" in the center. A signature is written across the seal. Below the seal, the text "NY Lic Surveyor #50404" is printed.

James Morrison, LS  
NY Lic Surveyor #50404